

1 PAUL B. SNYDER
2 United States Bankruptcy Judge
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5 **March 31, 2006**

6 MARK L. HATCHER
7 CLERK U.S. BANKRUPTCY COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT TACOMA
10 _____ DEPUTY

11 **UNITED STATES BANKRUPTCY COURT**
12 **WESTERN DISTRICT OF WASHINGTON AT TACOMA**

13 In re:

14 TALATALAGA MIKAELE-MALO,

15 Debtor.

Case No. 04-43100

MEMORANDUM DECISION

NOT FOR PUBLICATION

16 This matter came before the Court on a Motion for Relief from Automatic Stay filed by
17 National Merit Insurance Company (National). National seeks relief from stay for the limited
18 purpose of renewing a judgment lien. Based on the pleadings and arguments presented, the
19 Court's findings of fact and conclusions of law are as follows:

20 **FINDINGS OF FACT**

21 National holds a judgment against Talatalaga Mikaele-Malo (Debtor), entered under
22 Pierce County Cause Number 96-2-07855-2 on April 26, 1996 (Judgment). National's
23 Judgment was recorded and creates a lien against the Debtor's real property.

24 The Debtor filed a Chapter 13 bankruptcy petition on March 29, 2004. An order
25 confirming the Debtor's Fourth Amended Plan (Plan) was entered on January 18, 2005. The
Plan provides for a monthly payment to National of \$400, with interest of 12%. National's
claim is listed in the Plan at \$28,882. The Plan further provides in paragraph 10 that National

1 is to be paid "\$400 PER MONTH AS A CONTINUING CLAIM, WITH ANY BALANCE
2 REMAINING UNPAID ON THE PIERCE COUNTY SUPERIOR COURT JUDGMENT IN
3 CASE #96-2-07855-2, TO SURVIVE THIS PLAN IN REM."

4 Under Washington State law, the judgment will expire ten years after entry, or on April
5 26, 2006, unless renewed. National seeks relief from the automatic stay in order to renew its
6 judgment. The Debtor objects.

7 **CONCLUSIONS OF LAW**

8 National's motion raises the following issues: (1) does the automatic stay apply to acts
9 to renew or extend a judgment lien, and (2) should relief from the automatic stay be granted.
10

11 Several circuit courts have ruled that the automatic stay does not apply to acts to
12 merely extend a judgment lien. The case most often cited for this position is In re Morton, 866
13 F.2d 561 (2nd Cir. 1989). In Morton, the Second Circuit Court of Appeals stated:

14 The automatic stay provision of the bankruptcy code, 11 U.S.C. § 362(a),
15 operates only as a stay of "any act, to *create, perfect, or enforce*" a lien against
16 the property of the estate. 11 U.S.C. § 362(4) (emphasis added). Significantly,
17 the section does not explicitly prohibit acts to *extend, continue or renew* otherwise
valid statutory liens, nor is there any indication from the legislative history that
congress intended such a result.

18 Morton, 866 F.2d at 564.

19 Similarly, in In re Larson, 979 F.2d 625 (8th Cir. 1992), the Eighth Circuit Court of
20 Appeals, cited Morton with approval in affirming a lower court ruling holding that the filing of
21 an addendum to extend an existing lien did not violate the automatic stay. Larson, 979 F.2d
22 at 627. These circuits take the position that such action by a lienholder is not a violation of the
23 stay because it does not enlarge the lienholders rights, but "simply allows the holder of a valid
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1 lien to maintain the status quo - a policy not adverse to bankruptcy law, but rather in complete
2 harmony with it.” Morton, 866 F.2d at 564; Larson, 979 F.2d at 627 (quoting Morton, 866 F.2d
3 at 564).


4 The Ninth Circuit Court of Appeals has not specifically ruled as to whether the
5 automatic stay applies to acts to renew or extend a judgment lien. In the case of In re Spirtos,
6 221 F.3d 1079 (9th Cir. 2000), citing to Morton, the court determined that it did not need to
7 address this issue since 11 U.S.C. § 108(c) extended the time period for renewing a judgment
8 until 30 days after termination of the automatic stay. Spirtos, 221 F.3d at 1081.

9
10 In the instant case, the Debtor’s Chapter 13 Plan clearly provides that National’s lien is
11 to survive the Plan in rem, unless paid in full. In order to have the lien survive beyond the
12 time limitation of 11 U.S.C. § 108(c), it must be renewed under state law. It is not then
13 necessary for this Court to decide whether the automatic stay of 11 U.S.C. § 362 prevents a
14 lien renewal in the State of Washington, as the Debtor in their Chapter 13 Plan impliedly
15 consented to a renewal of the lien by providing that the lien would survive the Plan in rem.
16 Accordingly, relief from stay is granted to National to renew its judgment lien.

17 Although relief from the automatic stay has been granted in this case, this Court is not
18 holding that the stay necessarily applies to the renewal or extension of judgment liens under
19 state law, so that National was required to move to extend/renew its lien prior to its expiration.
20 As clarified by the Ninth Circuit Court of Appeals in Spirtos, 11 U.S.C. § 108(c) “extends the
21 limitations period so long as the creditor is barred by the automatic stay from enforcing its
22 judgment against the property of the estate.” Spirtos, 221 F.3d at 1081. Whether the stay
23 also precludes renewal of the judgment is “beside the point.” Spirtos, 221 F.3d at 1081. If
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1 National chooses not to extend the judgment while the automatic stay is still in effect, it will
2 have 30 days to do so after the stay expires pursuant to 11 U.S.C. § 108(c).

3 DATED: March 31, 2006

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5 Paul B. Snyder
6 U.S. Bankruptcy Judge
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